

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matters of	)	
	)	
Appropriate Framework for	)	
Broadband Access to the	)	CC Docket No. 02-33
Internet over Wireline Facilities	)	
	)	
Universal Service Obligations of	)	
Broadband Providers	)	
	)	
Review of Regulatory	)	CC Docket No. 01-337
Requirements for Incumbent	)	
LEC Broadband Telecommunications	)	
Services	)	
	)	
Computer III Further Remand	)	
Proceedings: Bell Operating	)	
Company Provision of Enhanced	)	CC Docket Nos. 95-20, 98-10
Services; 1998 Biennial Regulatory	)	
Review – Review of Computer III	)	
and ONA Safeguards and	)	
Requirements	)	
	)	
Conditional Petition of the Verizon	)	
Telephone Companies for Forbearance	)	
Under 47 U.S.C. § 169© with Regard	)	
To Broadband Services Provided Via	)	
Fiber to the Premises; Petition of the	)	WC Docket No. 04-242
Verizon Telephone companies for	)	
Declaratory Ruling or, Alternatively,	)	
For Interim Waiver with Regard to	)	
Broadband Services provided Via	)	
Fiber to the Premises	)	
	)	
Consumer Protection in the	)	WC Docket No. 05-271
Broadband Era	)	

## **THE REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PA PUC) hereby submits this Reply Comment in response to the Federal Communications Commission's (FCC) Report and Order and Notice of Proposed Rulemaking (NOPR) at CC Docket No. 02-33, 01-337, 95-20, 98-10; WC Docket No. 04-242, 05-271 issued on September 23, 2005. The September 23, 2005, Order established a new regulatory framework for broadband Internet access services offered by wireline facilities-based providers. The accompanying NOPR seeks comments on various issues, including customer proprietary network information, slamming, truth-in-billing, network outage reporting, section 214<sup>1</sup> discontinuance, section 254(g)<sup>2</sup> rate averaging requirements, and federal and state involvement.

### **Reply Comment of the Pennsylvania Public Utility Commission**

The PA PUC appreciates the opportunity to file a Reply Comment. As an initial matter, the PA PUC's Reply Comment should not be construed as binding on the PA PUC in any proceeding before the PA PUC. Moreover, the suggestions contained in this Reply Comment may change in response to subsequent events such as any later legal or regulatory developments at the federal or state level.

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<sup>1</sup> Section 214 applies to the extension of lines or discontinuance of service as well as certificate of public convenience and necessity.

<sup>2</sup> Section 254(g) directed the FCC to adopt geographic averaging rules "to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas ... be no higher than the rates charged by each such provider to its subscribers in urban areas" and to adopt the rate integration rules to "require that a provider of interstate interexchange telecommunications services ... provide such services to its subscribers in each State at a rate no higher than the rates charged to its subscribers in any other State." *See NPRM*, ¶ 157 (quoting 47 U.S.C. § 254(g)).

The PA PUC's Reply Comment makes five brief suggestions. The PA PUC suggests that as a result of the FCC's Order and the NOPR in this proceeding several issues arise that would be best addressed by the FCC in other proceedings.

The initial issue is what happens if under one reason/pretext or another conventional telecommunications broadband access services of various incumbent and competitive providers start being classified as "broadband Internet access services" and, thus, "non-jurisdictional" for commissions. What happens since telecommunications broadband access services are used for a variety of purposes and for transmission of various types of traffic, i.e., a DS3 circuit and access service transmits both "voice minutes" and "Internet bytes" in "packetized" and "non-packetized" form and does not care about FCC labels? If such a reclassification would take place would that lead to the "disappearance" of contribution payments to federal and state USF revenue pools after the FCC's 270-day transitional period? The FCC should consider these issues, raised as the result of its determination in this proceeding, in its review of the Universal Service Fund (USF) and in the Intercarrier Compensation proceeding. The USF and various aspects regarding the fund are already under review in the *USF Contribution Methodology* proceeding. In addition, how would a possible reclassification, as described above, be handled concerning the compensation among the entities involved. The issue of compensation for the use of facilities and other relevant charges is important for all involved. Thus, this issue should be considered in the Intercarrier Compensation proceeding at CC Docket 01-92.

A second issue that arises from the FCC's determination in this proceeding is how to avoid the issue of "Internet access" discrimination at both the federal and state levels in the absence of "common carrier" status. Without the "common carrier" status and the associated applicable requirements, entities could readily broker different deals with various entities. Different deals could result in more

favorable terms for one entity exclusively or for those selected by the carrier or facilities owner. Thus, non-selected entities would be at a disadvantage in their attempt to provide their services in the market. Non-facility entities may find it difficult to overcome control and competition, since they may have to negotiate private contracts for access with entities that already control or own facilities needed to reach the end-user customer for whom they both compete. Consequently, there could be fewer offerings in the marketplace and less competition.

Less competition would mean fewer choices for the end-user/consumer and less chance for competitive prices. Given the potential ramifications of this issue, the PA PUC suggests it should be addressed in the IP-Enabled Services and/or Intercarrier Compensation proceeding(s).

A third issue is can telecommunications carriers avoid legitimate Telecommunications Act-1996 (TA-96) interconnection obligations by “labeling” their wireline broadband access facilities and services as “wireline broadband Internet access” services and facilities. What are the related implications? Alternatively, if such “labeling” takes place, how will state commissions and the FCC resolve issues relating to the potential discriminatory provisioning and the pricing of access facilities and services, especially in the controversial “special access” services and facilities area?

The PA PUC is aware of an alternative legal interpretation of Section 251(a) of TA-96 that holds that the obligation to seamlessly interconnect to the “telecommunications” network applies to “telecommunications” but is not applicable to other services such as information services like wireline broadband Internet access services. Since there might be no obligation to interconnect services that are not classified as “telecommunications” under TA-96, end-users

might find it difficult to transact their business. If an interconnection service equivalent might happen it may occur via privately negotiated contracts that are not covered by tariffed rates or subject to public disclosure and other regulatory obligations associated with Title II common carriers. Given the possible implications of this issue, the PA PUC suggests that the FCC consider addressing the above matters in the Special Access Proceeding.

Fourth, access defined as “broadband access to the Internet” can have implications on a state’s jurisdiction over market entry and exit and interconnection of telecommunications carriers under TA-96. A pure “data competitive local exchange carrier” (providing ATM, Frame Relay, xDSL, etc services) could lead to this entity claiming that it is a provider of “wireline broadband Internet access” and thus not subject to state jurisdiction. If this same “non-jurisdictional data competitive local exchange carrier” seeks TA-96 Section 251(c) UNE interconnection, is the “non-jurisdictional data CLEC” an unregulated “information provider” or “telecommunication carrier” under TA-96? The same concerns as mentioned above regarding interconnection apply here as well. Therefore, this issue might be better addressed in the IP-Enabled Services proceeding.

For the issues and reasons set forth above, the PA PUC respectfully suggests that the generic proceedings may be the appropriate forum to address these issues.

#### **NOPR – Federal and State Involvement**

Regarding the issue of federal and state involvement, as raised in the NOPR, the PA PUC urges the FCC to consider adoption of NARUC’s position on federalism in which authority is shared between the FCC and the states. At the

very least the PA PUC urges the FCC to consider adopting retention of state authority to address consumer issues at the state level.

Respectfully submitted,

Pennsylvania Public Utility Commission

Kimberly A. Hafner, Esq.  
Assistant Counsel  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-5000

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